

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GUILLERMO TORIBIO, on behalf of himself and
others similarly situated,

Plaintiff,

-against-

NEPTUNO RESTAURANTS, LLC, d/b/a SALA
ONE NINE, et al.,

Defendants.
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19-CV-4032 (OTW)

MEMORANDUM OPINION & ORDER

ONA T. WANG, United States Magistrate Judge:

On October 8, 2019, the Court declined to approve the parties' proposed settlement under *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015) due to an overbroad release provision. (ECF 22). The parties have subsequently submitted a revised settlement agreement which appropriately limits the release to wage-and-hour claims. (ECF 23-1 at 2). Accordingly, the final analysis of the parties' settlement agreement is determining the reasonableness of the attorney's fees and costs.

As noted in the Court's prior order, Plaintiff's requested attorney's fees of \$4,325 (\$4,875 total award - \$550 costs) represents 35% of the net settlement amount (\$4,325/[\$13,000-\$550]). (ECF 22 at 5). Although Plaintiff's counsel argues that the requested fees are reasonable because they are still lower than the charged amount, courts typically will not award greater than one-third of the net settlement amount absent "extraordinary circumstances," even where the requested fees are less than the lodestar. *See De Jesus Galindo v. BLL Restaurant Corp.*, No. 15-CV-5885 (HBP), 2018 WL 1684412, at *3 (S.D.N.Y. Apr. 6, 2018)

(reducing fees to one-third of net settlement despite initial request being less than billed amount); *Santos v. EL Tepeyac Butcher Shop Inc.*, No. 15-CV-814 (RA), 2015 WL 9077172, at *3 (S.D.N.Y. Dec. 15, 2015) (same); *Run Guo Zhang v. Lin Kumo Japanese Restaurant Inc.*, No. 13-CV-6667 (PAE), 2015 WL 5122530, at *4 (S.D.N.Y. Aug. 31, 2015) (same). As this was a relatively straightforward case with one plaintiff and no motion practice, the attorney's fees shall be reduced to one-third of the net settlement, or \$4,150 $(\$13,000 - \$550)/3$. Plaintiff's request for \$550 in costs to cover the filing and service fees is reasonable, bringing Plaintiff's counsel's total fees and costs to \$4,700 $(\$4,150 + \$550)$. The difference between the requested fees and the reduced award, \$175, shall be re-allocated to Plaintiff.

For these reasons, the Court now approves the parties' proposed settlement agreement as fair and reasonable. It is HEREBY ORDERED that Plaintiff shall receive **\$8,300**, and Plaintiff's counsel shall receive **\$4,700** in attorney's fees and costs. It is further ORDERED that the action is dismissed with prejudice and without costs. The Court retains jurisdiction pursuant to the terms of the settlement agreement. Any pending motions are to be terminated as moot and all conferences are cancelled.

SO ORDERED.

Dated: October 21, 2019
New York, New York

s/ Ona T. Wang
Ona T. Wang
United States Magistrate Judge